

LTBB Wetland Protection and Management Regulations

SECTION I. PURPOSE

These Regulations are intended to manage and protect wetlands as set out in Part 4: “Protection and Management of Wetlands” of the Nibiish Naagdowen “Care of the Water”: Clean Water Act WOS 2016-008. The Little Traverse Bay Bands of Odawa Indians (LTBB) recognizes the importance of Wetlands and believes their protection and preservation are in the best interests of the Tribe and the next seven generations. Wetlands are an integral and essential part of natural ecosystems with many functions and benefits ranging from sediment and flood control to genetic and culturally-significant species banks. Wetlands are sensitive systems that are easily affected by direct and indirect activities of people. These Wetland Protection and Management Regulations (WPMR) are designed to minimize and/or eliminate the negative effects that these activities may have on Wetlands, and to ultimately strive towards preventing the loss of Wetlands within the jurisdiction of LTBB.

SECTION II. DEFINITIONS

- A. “Applicant” means any person or entity applying to conduct activity on or in any way alter Wetlands, including but not limited to individuals, sole proprietorships, partnerships, corporations, associations, governments, and governmental agencies.
- B. “Coefficient of Conservatism” means a score between 0-10 assigned to each native plant species by a panel of regional experts. Scores are based on the sensitivity to disturbance and fidelity to habitat of the species.
- C. “Conservation-Enforcement Officer” means any Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations, or federal enforcement agents, including a Special Agent of the U.S. Fish and Wildlife Service.
- D. “Discharge” means to place, fill, or dump.
- E. “Development” means any artificial change to improved or unimproved real estate, including, but not limited to, building or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.
- F. “Floristic Quality Assessment” means a vegetation-based ecological assessment that generates a list of observed species in a given wetland area.
- G. “Floristic Quality Index” means the derived score from the Floristic Quality Assessment.

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H. “Fill” means soil, sand, gravel, clay, peat, debris, and refuse waste of any kind, or any material which displaces soil or water or reduces water retention potential and unregulated storm water that results in sedimentation within a wetland.

I. “High Quality Wetlands” means the wetland has one of the following:

- a. The presence of Tribal, Federal or State threatened, endangered or special concern species.
- b. Wetlands classified as or that contain communities as recognized by the Michigan Natural Features Inventory (MNFI) Natural Communities of Michigan (2017 or most recent) as S1, S2, or S3 ranking.
- c. Wetlands with a native Floristic Quality Index higher than 35 or with a mean Coefficient of Conservatism (C)-value of 4.0 or greater.
- d. Wetlands of cultural significance to the LTBB as determined by the Tribal Historic Preservation Office, Tribal Council, or the Natural Resources Commission.

J. “Hydric Soils” means soils that are formed under conditions of saturation, flooding, or ponding that develop an anaerobic condition after a period of time in the upper 40 inches (1 meter) of the soil layer.

K. “Hydrologic Unit” means a drainage area delineated to nest in the Watershed Boundary Dataset of the United States Geological Survey, a multi-level, hierarchical drainage system. Its boundaries are defined by hydrographic and topographic criteria that delineate an area of land upstream from a specific point on a river, stream or similar surface waters.

~~J-L~~. “Hydrologic Unit Code” or “HUC” means the numeric digits defining a Hydrologic Unit.

~~K-M~~. “Impact” means adverse effect.

~~L-N~~. “Incidental wetlands” means wetlands that were created as a result of development such as road building, and includes wetlands located alongside existing roads. This term does not apply to wetlands that were present previous to the development.

~~M-O~~. “In-kind” means a resource type that is structurally and/or functionally similar to the impacted resource type.

~~N-P~~. “Litter” means trash, mowed or cut vegetative debris, dead animals, or dead animal parts placed or left lying in a Wetland.

~~O-Q~~. “Out-of-kind” means a resource type that is structurally and/or functionally different than the impacted resource type.

~~P-R~~. “Mitigation” means reducing the severity of Impacts by offsetting damages.

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1 ~~Q.S.~~ “Person” means any individual, firm, governmental unit, organization,
2 partnership, corporation, or company.
3

4 ~~R.T.~~ “Program” means the LTBB Environmental Services Program, within the
5 Natural Resources Department.
6

7 ~~S.U.~~ “Wetland” means land characterized by the presence of water at a frequency
8 and duration sufficient to support, under natural conditions, aquatic vegetation and/or
9 aquatic life, and which has hydric soils. This term includes, but is not limited to,
10 swamps, marshes, bogs and fens, but does not include stormwater control features
11 constructed to convey, treat, or store stormwater that are created on dry land.
12

13 ~~T.V.~~ “Wetland Delineation” means the establishment of whether a wetland is
14 present as well as the location and size of wetland boundaries for regulatory purposes.
15

16 ~~U.W.~~ “Wetland Restoration” means the reestablishment of wetland characteristics
17 and functions at a site where they have ceased to exist through the replacement of
18 wetland hydrology, vegetation, or soils. Enhancement of existing wetlands cannot be
19 considered as wetland mitigation.
20

21 ~~V.X.~~ “Wetland Vegetation” means plants that exhibit adaptations to allow, under
22 normal conditions, germination and propagation, and to allow growth with at least
23 their root systems in the water or saturated soils. Also known as “Hydrophytic
24 Vegetation.”
25
26

27 **SECTION III. JURISDICTION**

28

29 A. These regulations shall apply to wetlands under LTBB’s jurisdiction.
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31 **SECTION IV. REGULATED WETLANDS**

32

33 A. If a wetland meets any of the following criteria, it will be regulated:
34

- 35 1. Connected to one of the Great Lakes.
36
- 37 2. Located within 1,000 feet of one of the Great Lakes.
38
- 39 3. Connected to an inland lake, pond, river, or stream.
40
- 41 4. Located within 500 feet of an inland lake, pond, river or stream.
42
- 43 5. More than 5 acres in size, regardless of the size of the impacted area and regardless of
44 property lines.
45

6. Classified as a High Quality Wetland, regardless of the size of the impacted area.

7. At least 1/3 acre in size and within lands held in trust for LTBB by the Secretary of Interior, regardless of the size of the impacted area.

B. Under LTBB's sovereign authority as set out in its Constitution, LTBB has the power to regulate the activities of all Persons whose actions directly impact the lands specified in subsections (A), and the ability to enforce these regulations against all such Persons.

SECTION V. REGULATIONS

A. Activities Allowed Without a Permit:

The following activities are allowed without a regulated Wetland permit:

1. Activities associated with hunting, traditional gathering, or harvesting;
2. Walking, hiking, nonmotorized boating, and wildlife viewing;
3. Emergency activities such as broken gas lines or oil and hazardous materials containment and clean-up of any spill of oil and/or hazardous materials that has occurred in and/or adjacent to regulated Wetlands; notification of oil and hazardous materials containment and clean-up is required in writing to the Program within 3 calendar days after the commencement of the activity;
4. Maintenance or operation of serviceable structures existing in regulated Wetlands before the enactment of the LTBB Nibiish Naagdowen "Care of the Water": Clean Water Act WOS 2016-008 on September 15, 2016 or that exist on properties not yet within the LTBB jurisdiction at the time of enactment of the Statute, as long as the maintenance or operation of those structures does not cause additional harm or negative impacts to surrounding or adjacent regulated Wetlands, and the location or size of the structures does not change, unless those changes will benefit the regulated Wetland, adjacent regulated Wetlands, and/or water quality;
5. Uses associated with regulated Wetlands incidentally created through the excavation of sand or mineral mining after the enactment of the LTBB Nibiish Naagdowen "Care of the Water": Clean Water Act WOS 2016-008 on September 15, 2016, if those regulated Wetlands are less than ten (10) years old and the area was not a regulated Wetland prior to the excavation;
6. Uses associated with regulated Wetlands created as a result of construction and operation of water treatment pond or lagoon in compliance with U.S. federal water pollution control regulations;

7. Manmade structures designed for drainage or stormwater management in compliance with U.S. federal water pollution control regulations;
8. Maintenance (but not construction) of drainage ditches;
9. Construction and maintenance of irrigation ditches;
10. Construction and maintenance of farm or stock ponds;
11. Construction and maintenance of [unimproved roads on farms and through forests for the uses of farming and forestry, respectively](#) and [forest roads](#), in accordance with best management practices; and
12. Maintenance of structures such as dams, dikes, and levees.

B. Activities Allowed With a Permit:

Proposed activities may only be permitted if they are determined to be of minimal negative impact to the regulated Wetland as well as surrounding wetlands, and if project alternatives to eliminate adverse wetland impacts are not feasible. Activities of minimal negative impact may comply with the Purpose of these Regulations as stated in § I. However, due to the unique nature of wetlands, each activity will be determined on a case-by-case basis by the Program and no case will serve as precedent for subsequent cases.

According to procedures established in this §, activities that may be permitted include, but are not limited to:

1. Boardwalks, nature trails, wildlife viewing platforms;
2. Improvements for the purposes of enhancement, protection, and restoration [of wetlands and/or surface water](#);
3. Maintenance or improvement of public streets, highways, or other existing roads, within the right-of-way and in such a manner as to assure that any adverse effect on a regulated Wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location or size of the street, highway, or road;
4. Maintenance, repair, or operation of electric transmission and distribution power lines or other existing structures on or in regulated Wetlands, including any spraying of vegetation, removal of earth, or the placement of any fill material in regulated Wetlands;
5. Activities associated with Tribal scientific research or education that have an

1 Impact on the regulated Wetland;

- 2
- 3 6. Mowing, cutting or burning regulated Wetland vegetation, unless the cutting is
- 4 done for traditional gathering or harvesting purposes;
- 5
- 6 7. Discharging or placing Fill material in a regulated Wetland;
- 7
- 8 8. Dredging or removing soil or minerals from a regulated Wetland;
- 9
- 10 9. Building permanent structures upon or Developing in a regulated Wetland;
- 11
- 12 10. Altering wetland hydrology, including dDraining surface water or groundwater
- 13 from a regulated Wetland, channelizing, and discharging water or stormwater into
- 14 a Regulated wetland that is not otherwise covered in a National Pollution
- 15 Discharge Elimination System (NPDES) permit;
- 16
- 17 11. The clean-up and/or removal of solid waste requiring mechanized efforts;
- 18
- 19 12. Activities that bring a wetland into production for farming, horticulture,
- 20 silviculture, lumbering, and production of food, fiber, and forest products, where
- 21 the wetland has not previously been used for farming; and
- 22 13. Creating, enlarging, diminishing, or altering a lake, pond, watercourse, or wetland.
- 23

24 **C. Best Management Practices:**

25 The following BMP's are recommended in regulated Wetlands and may be required as

26 a condition of permit approval (this list is not all inclusive):

- 27
- 28 1. Any hay, straw, or mulch brought onto or used in regulated Wetlands shall
- 29 be Certified Noxious Weed Seed Free according to North American Weed
- 30 Management Association standards.
- 31
- 32 2. Any soils placed in regulated Wetlands shall be sterile and free of weed
- 33 seeds, pesticides, and herbicides.
- 34
- 35 3. Structures shall be setback from regulated Wetlands at least fifty (50) feet.
- 36
- 37 4. A protective barrier such as a silt fence shall surround and protect
- 38 regulated Wetlands during any construction activities that may result in
- 39 increased De discharge of sediment or other pollutants into regulated
- 40 Wetlands.
- 41
- 42 5. Vegetated buffer strips: Vegetated buffer strips with native vegetation
- 43 shall be preserved around all regulated Wetlands. The width of the buffer
- 44 strip shall be a minimum of 15 feet around all regulated Wetlands, except
- 45 around those greater in size than one acre, high quality wetlands, or if the
- 46 slope of the wetland or immediately adjacent uplands is greater than 12%
- 47 (where slope is determined by soil U.S. Soil Survey maps or a professional

survey), where the width of the buffer strip shall be a minimum of 50 feet. Incidental Wetlands are not subject to buffer strip width requirements; however, a vegetated buffer strip is still recommended.

6. Prior to any work commencing and after any work has been done in wetlands, equipment shall be inspected and cleaned (including tires) to be free of soil and plant parts (including roots and seeds) in order to avoid spreading noxious or invasive species.
7. Any vegetation plantings or replanting in wetlands must be done using plants native to and grown in Michigan. Plants having Northern Michigan genotypes are preferred (i.e. native species grown in Northern Michigan or directly propagated from native species growing in Northern Michigan). Planting invasive plants species is prohibited. For a full list of plants native to Michigan, see: *Michigan Floristic Quality Assessment with Wetland Categories and Examples of Computer Applications for the State of Michigan* – Revised, 2nd Edition, and any subsequent revisions or editions.

D. **Minimizing Wetland Impacts.** Applicants must show that their proposed activity has avoided direct impacts to wetlands by conducting an alternatives analysis and by limiting the degree or magnitude of the activity and its implementation.

Applicants must show how they have minimized unavoidable impacts to the wetland by limiting the degree or magnitude of the wetland activity and its implementation.

The Program will consider the following factors when reviewing the sufficiency of the applicant's efforts to minimize wetland impacts:

1. The size, location, and timing of the project/use/activity, including amount of soil fill or soil removal, especially relative to the size of surrounding wetlands and/or water bodies;
2. Impacts on wetland functions, including: habitat for organisms, biogeochemical cycling, connectivity to other wetlands and water bodies;
3. The extent of changes in or modifications to vegetation, soils, and/or hydrology;
4. The presence of rare, threatened, or endangered species according to LTBB or United States Fish and Wildlife Service 2017 or most recent;
5. The presence of culturally significant species in the LTBB Native Plants Initiative;

6. The presence of critical habitat for any of those species in #4 or #5 of this Subsection;
7. The presence of noxious weeds or harmful non-native and invasive species in wetlands or within 100 yards of wetlands;
8. The proximity of any structures to the wetland;
9. The use of Best Management Practices in §V, Subsection C;
10. The effects of uses or activities on the water quality of the wetland and/or adjacent water bodies; and
11. The effects of cumulative impacts on the wetland and/or water body.
12. The wetland's score in the U.S. EPA DRASTIC model (1987), a standardized system for evaluating ground water pollution potential using hydrogeologic settings will be used to identify groundwater recharge areas.
- 12.13. The extent to which the proposed activity will interfere with Tribal rights for hunting, fishing, trapping, ricing, gathering, and cultural, ceremonial, and spiritual uses.

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SECTION VI. PROHIBITED ACTIVITIES

The following activities shall be prohibited on lands described in § IV of these Regulations

1. No person shall engage in wanton destruction or waste of fish, game, reptiles, amphibians or plants;
2. Motorized and non-motorized vehicles are prohibited on regulated Wetlands unless they are used on an authorized trail system or road;
3. No person shall possess or ride a horse in a Regulated Wetland;
4. No person shall dump, deposit, place, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of litter on a Regulated Wetland;
- ~~5. No person shall engage in an activity that interferes with Tribal rights for hunting, fishing, trapping, ricing, gathering, and cultural and ceremonial/spiritual uses; and~~
- ~~5. No person shall engage in any other activity deemed as destructive by the Program and Environmental Appeals Board.~~

1 **SECTION VII. MITIGATION**

2 A. The Program can consider wetland mitigation as a condition of permit approval,
3 such as the types of actions described in Subsection (B) of this section, only if all of
4 the following conditions are met:

- 5
- 6 1. The wetlands impacts are otherwise eligible for permits pursuant to § V;
 - 7
 - 8 2. No feasible and prudent alternative is available to avoid impacts on the
9 wetlands; and
 - 10
 - 11 3. An applicant has used all practical means to minimize the impact to the
12 wetlands. This may include the permanent protection of wetlands on the site
13 that are not directly impacted by the proposed activity.
14

15 B. The Program shall take into consideration the following when making wetland
16 mitigation determinations:

- 17
- 18 1. The ability to create or restore wetlands of equal or greater in size and of
19 equal or greater quality;
 - 20
 - 21 2. The ability to create or restore other wetlands contiguous to existing wetlands;
 - 22
 - 23 3. The ability to create or restore High Quality Wetlands;
 - 24
 - 25 4. The ability to create or restore other wetlands within the same United States
26 Geological Survey Hydrologic Unit Code watershed (12-digit or greater) as
27 the permitted activity;
 - 28
 - 29 5. Whether the wetlands mitigation project provides the same level of access to
30 the area as was previously enjoyed by the public or Tribal Citizens; and
 - 31
 - 32 6. The restoration of previously existing wetlands is preferred over the creation
33 of new wetlands where none previously existed.
34

35 C. The minimum ratio for wetland mitigation is 1:1 for all authorized activities
36 requiring mitigation as a condition of the permit. This ratio may be increased based
37 on the following factors:

1. Whether the mitigation activity will occur before or concurrent with the permitted activity;
2. Whether the mitigation activity is located within the 12-digit HUC watershed or without;
3. Whether the mitigation wetland type will be the same wetland type as the impacted wetland; and
4. Whether the impacted wetland is classified as a High Quality Wetland, Violation, or any other wetland requiring a permit.

Type of Impact Site	Compensation Location	Type of Compensation	Compensation Process	Ratio
High Quality Wetland	n/a	n/a	n/a	2.5:1.0
All Other Wetlands	In 12-digit HUC watershed	In-kind	In-Advance	1.0:1.0
			Not-In-Advance	1.25:1.0
		Out-of-kind	In-Advance	1.25:1.0
			Not-In-Advance	1.5:1.0
	Outside of 12-digit HUC watershed	In-kind	In-Advance	1.25:1.0
			Not-In-Advance	1.5:1.0
		Out-of-kind	In-Advance	1.5:1.0
			Not-In-Advance	1.5:1.0
Wetland Preservation				5.0:1.0
Violation	n/a	n/a	n/a	3.0:1.0

SECTION VIII. WETLAND PERMITS.

A. The Program must determine the following before a permit can be issued:

- The permit would be in the public interest.
- The permit would be otherwise lawful.
- The permit is necessary to realize the benefits from the activity.
- No unacceptable disruption to aquatic resources would occur.

- The proposed activity is wetland dependent or no feasible and prudent alternatives exist.

B. The Program can recommend an issuance or denial of an applicant for a permit, as well as revokes, suspend, or modify an existing permit.

C. .Wetland Delineations. Delineations are required for any regulated activity under Section V. B. Delineations done before the application is submitted are allowed and encouraged as long as they have been done within 1 year of the application being received by the Environmental Services Program. The Program or one of its designees such as the U.S. Army Corps of Engineers, Michigan Natural Features Inventory, or a private firm will verify the delineation. The following documentation is required for a complete Wetland Delineation Report:

1. An aerial map of the site using the most recent aerial photos available, showing the scale, direction to true north, and delineated wetland boundaries;
2. Methods used to sample and/or determine wetland boundaries;
3. Any preliminary or historical data collected and used for the delineation, including citations for information sources;
4. A summary of data collected on the field data sheets, including the size and a description of the delineated wetland;
5. A description of any significant findings or problems encountered during the delineation;
6. All field data sheets used to determine the wetland boundary, including all information related to the verification of indicators of wetland vegetation, hydric soils, and wetland hydrology; and
7. In the absence of hydric soils, hydrology can be indicated by inundation, saturation within 12 inches of the surface, water marks, drift lines, sediment deposits, water stained leaves, and aquatic invertebrate remains.

D. Types of Permits

1. A General Permit may authorize activities that will impact 1/3 acre or less of regulated wetlands.
2. A Minor Permit may authorize activities that will impact 5 acres or less of regulated wetlands.
3. A Major Permit may authorize activities that will impact more than 5 acres of regulated wetlands.

E. Permit Applications:

1. Permit applications under this Section are subject to the following application fees and public review:

Type of Permit	Permit Fee	Type of Review	Estimated Timeline
General	Up to \$100*	Program only, no public review	1-30 business-calendar **days
Minor	Up to \$500*	Program only, no public review	1-30 business-calendar days
Major	\$2000	Application posted publicly for 30 calendar days after Administrative Completeness Review. Program will review public comments and application.	1-120 business-calendar days, plus 30 calendar days for public review, plus possible public hearing
*Based on Program's time to review permit			
**Calendar days will not include office closures or LTBB holidays			

Permits for research, educational, and cultural purposes do not require a fee.

2. Before conducting an activity requiring a permit on regulated Wetlands, the Applicant must submit a complete Application form to the Program.
3. The Wetland Permit Application Form is available at the Environmental Services Program, located at 7500 Odawa Circle Harbor Springs, MI 49740, the LTBB website, and the Nibiish Naagdowen website.
4. Upon submission of the Application, the Program will stamp the date received on the Application.
5. After stamping, the Application will undergo Administrative Completeness Review. The Program will review all documentation for completeness, ensuring there is enough information to make a decision, and no errors, inconsistencies, and omissions. This review will last 30 [business-calendar](#) days in most cases, [not including office closures or LTBB holidays](#). The Program can take up to an additional 90 [business calendar](#) days of review time, [not including office closures or LTBB holidays](#), and will notify the Applicant if so.
6. If the Program deems the Application incomplete or needs additional information, the Program will notify the applicant. Additional information may include a wetland evaluation or revision to the Wetland Permit Application in order to reduce or eliminate negative impacts to wetlands, and shall be submitted to the Environmental Services Program within 60 [business-calendar](#) days, [not including office closures or LTBB holidays](#), of the request. If the applicant does not submit the necessary information to the Environmental Services Program within the allotted timeframes specified in these Regulations, the application may be denied. Any applications not

1 completed within one (1) calendar year of original submission will be discarded and a
2 new application will be required.

- 3 a. An evaluation of the proposed activity may be requested by the
4 Environmental Services Program if the Impacts of the factors in §V
5 Subsection D are unknown. This evaluation shall include the effects upon
6 wetland characteristics and function, including but not limited to the effects
7 upon soils, hydrology, water quality, flow, and levels, as well as the wildlife,
8 fish, and vegetation within a lake, river, stream or wetland regulated by
9 Nibiish Naagdowen “Care of Water”: Clean Water Act. If an evaluation is
10 requested, the applicant will be required to have the wetland evaluation
11 completed by a professional wetland consultant and will be responsible for all
12 associated fees. The timeline for completed applications will be extended if an
13 evaluation of the wetland is required.

- 14
15 7. The applicant will be informed of approval or denial of the application after the
16 Administrative Completeness Review and a staff site inspection. If neither a no
17 decision or a notification for extra time needed for review is made within 30 ~~business~~
18 ~~days~~calendar days, not including office closures or LTBB holidays, of an application
19 being submitted to the Program, the application is automatically approved. Approved
20 permits will be available for pickup at the LTBB Natural Resources Department
21 Environmental Services Program, or will be mailed to the applicant.

- 22
23 8. Permits decisions are effective 30 calendar days after issuance of the Program’s
24 decision, unless a later date is specified.

- 25
26 9. Permits are valid for two years from the date of issuance. The Applicant can request
27 an extension, in writing, from the Program at least 14 calendar days before their
28 permit expires.

29
30 F. Inspections. The applicant must allow representatives from the Program and other entities
31 of their choosing such as the Environmental Protection Agency (EPA) and United States
32 Army Corps of Engineers (USACE) to inspect the permitted activity at any time deemed
33 necessary to ensure that the activity is being or has been accomplished in accordance with
34 the terms and conditions of the permit.

35
36 G. Public comment. General and Minor Permits will not be available for public review, but
37 the public may sign up to be notified in writing of permit decisions by going to the
38 Program’s website www.nibiishnaagdowen.com. Applications for Major Permits will be
39 posted on the Program’s website at www.nibiishnaagdowen.com for 30 ~~days~~calendar
40 ~~days~~calendar days, not including office closures or LTBB holidays, after Administrative Completeness
41 Review is complete. The Program will create an e-mail list serv of those interested in
42 public comment opportunities within 90 ~~business days~~calendar days, not including office
43 ~~closures or LTBB holidays~~, of the passing of these regulations. The Program may use
44 comments ~~to inform the permit decision~~to understand Impacts or benefits of the proposed
45 activity, the public’s desire for more information, and the need for clarification on the
46 application or proposed activity. Commenters may ~~make recommendations or requests~~.

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1 including a request for a public hearing, which may occur at the discretion of the Program
2 within 30 business days calendar days of the request or as soon as possible.

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4 H. Appeals. An applicant, permittee, or any interested person may appeal the Program's
5 permit decision to the Environmental Appeals Board (EAB) within 30 business days of
6 issuance of the decision. Information on of the EAB and how to file an appeal will be on the
7 Nibiish Naagdowen website. The appellant will notify the Program in writing of their desire
8 to have the permit decision appealed. The Program will send the appeal to the Direct
9 Services Administrator, who will notify the EAB of the appeal. The EAB's duties will
10 follow WOS 2017-XXX. Failure to appeal to the EAB will preclude judicial review of the
11 permitting decision by the Tribal Court.

12
13 I. Schedule of Money Penalties; No Contest. The following fees and forfeitures may be
14 imposed by the court upon the receipt of an admission that a violation of these regulations
15 has occurred, or a plea of no contest, which may be done either in person or in writing. This
16 schedule shall not bind the Tribal Court as to forfeitures assessed by the court after
17 adjudicating a violation where the defendant has entered a plea of not guilty.

18
19 Any person convicted of any violation of these regulations may, at the Court's discretion, be
20 charged the cost of providing equitable restitution to the Tribe for the damage which would
21 be caused by each violation in addition to any other fines or penalties imposed by the Tribal
22 Court. A person found liable for an infraction, upon a charge of illegal taking, killing, or
23 poessions for a plant, fish, migratory bird, or wildlife creature shall reimburse the Tribe for
24 each plant, fish, migratory bird, or wildlife creature, according to Tribal Reservation Natural
25 Resources Rules and Regulations 2012 or thereafter in addition to the following schedule:

Fines for Species	Maximum Amount
Endangered or Threatened Species--Lake Huron Tansy, Houghton's Goldenrod, Hungerford's Crawling Water Beetle	\$1,000
Black ash, white birch, basswood	\$1,000
Wild rice, sweetgrass, bulrush	\$50
Any fish, plant, or game animal not named	\$25

27 In determining the amount of a civil penalty the court shall consider the seriousness of
28 the violation or violations, the economic benefit, if any, resulting from the violation, any
29 history of violations, any good faith efforts to comply with the applicable requirements,
30 the economic impact of the penalty on the violator, and other matters justice may require.

31
32 Civil fines have a maximum of \$10,000 per day and may require seizure of all equipment
33 and property used to violate regulations and/or wetland remediation and mitigation at a
34 3:1 ratio. The court may use the following schedule to assign civil fines:

Violation	Penalty
Operating without a permit	\$500-\$10,000 per day and restore wetlands at a 3:1 ratio
Violation of a major permit	\$2000-\$10,000 per day and restore

	wetlands at a 3:1 ratio	
Violation of a minor permit	\$500-\$5,000 per day and restore wetlands at a 3:1 ratio	
Violation of a general permit	\$100-\$1,000 per day and restore wetlands at a 3:1 ratio	
Dumping, depositing, placing, throwing, or leaving (or causing any of the former) litter on a regulated wetland		\$500
Interfering with Tribal rights for hunting, fishing, trapping, ricing, gathering, and cultural and ceremonial/spiritual uses		\$500
Failure to obtain a permit		\$500
Using a motorized or non-motorized vehicle on an unauthorized trail system		\$100
Possessing or riding a horse in a regulated wetland		\$100
Other activities deemed as destructive by the Program and Environmental Appeals Board		\$100

J. Hearings in Tribal Court. The Tribal Court shall adjudicate all matters arising under ~~this ordinance~~these regulations pursuant to the provisions of the Tribal Court's Rules of Procedures as appropriate.

SECTION IX. CONFLICT OF INTEREST

A. No Program employee shall participate in a permit action that involves himself or herself, any wetland activity with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

B. To the extent not prohibited by Subsection (A) of this section, no employee of the Program shall participate in any proceeding as a consultant or in any other capacity on behalf of Applicant, except to the extent otherwise allowed under LTBB law. In no case shall a Program employee participate as a consultant or in any other capacity on behalf of any Applicant in any proceeding that was instituted or ongoing during the employee's tenure with the Program.

SECTION X. ENFORCEMENT

A. LTBB Conservation Enforcement Officers, ~~the Program and other tribal~~Tribal Law Enforcement, state and federal law enforcement agencies or personnel as authorized through

1 deputization agreements, memorandums of understanding or compacts are hereby authorized
2 to enforce these regulations. Tribal law.

Commented [CK2]: Have to leave this in until we get authority
for a 404 program

3
4 B. Enforcement actions on wetland activities will follow § XLIX and §L of the Nibiish
5 Naagdowen “The Care of the Water”: Clean Water Act.

DRAFT